IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8621 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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M/S. SAIBABA SHIP BREAKING CORPORATION

Versus

UNION OF INDIA

Appearance:
MR ANILKUMAR D MARU for Petitioner No. 1
MR DN PATEL for Respondents

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 01/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE RAVI R.TRIPATHI)

#. Rule. Mr.D.N.Patel, Standing Counsel for the Union of India waives service of Rule on behalf of respondents.

#. The present petition is filed against an order dated 5.9.2001 passed by the Commissioner (Appeals), Central Excise & Customs, Ahmedabad. Earlier, the petitioner had filed Special Civil Application No.2813 of 2001 wherein, the learned advocate appearing for the parties made a statement that the order passed by the Commissioner dated 2nd March, 2001, is appealable and the period of limitation is three months from the date of receipt of the order and it is also open for the petitioner to move an application for further condonation upto a period of three months. On this statement being made, the learned counsel appearing for the petitioner had withdrawn that Special Civil Application to avail the remedy of filing an Appeal.

#. On Appeal being filed, the Commissioner (Appeals), Central Excise & Customs, Ahmedabad, has observed in paragraph-4 of the impugned order that, "the Appeal is filed approximately 59 days later than required". He has further stated that, "the delay is more than 30 days which is beyond his power of condonation". The Appeal is not entertained on this ground. The Commissioner of Appeals has also recorded that the petitioner has not filed application for condonation of delay.

#. It seems that the Commissioner (Appeals) has some misconception about his power to condone the delay. In that view of the matter, this petition is allowed on the short ground that the Commissioner of appeals shall consider the question of condonation of delay, more particularly, in the light of the judgment of the Apex Court in the matter of Madura Coats Limited v. Collector of Central Excise, Madurai reported in 1994(71) E.L.T.347 (S.C.), wherein the Apex Court has considered that the delay caused in filing the Appeal before the Tribunal due to pursuing other remedies in the High Court or Supreme Court is sufficient cause for condoning delay. Consequently, the Order of the Commissioner (Appeals) is quashed and set aside and the matter is remanded to the Commissioner (Appeals) to reconsider the Appeal in accordance with law including the application for condonation of delay. In case if the petitioner has not filed an application for condonation of delay, it will be open for the petitioner to file the same setting out the grounds for condonation. Rule is made absolute to the aforesaid extent. No order as to costs.

(D.M.Dharmadhikari, C.J.)

(Ravi R.Tripathi, J.)

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